

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KAPLAN

03 CV 9580

TONY ARAGON AND MARY ELLEN ARAGON; NICHOLAS DITIRRO
AND SHIRLEY DITIRRO; HARRY ROSS; JAMES WRIGHT AND DONNA
WRIGHT; CATHLEEN KELLER; ROBERTO RODRIGUEZ AND MARIA
G. RODRIGUEZ; BONNIE WILLEMSON; SHIRLEY QUARLES; TOBY
HEFFNER AND TINA HELART; JUAN VALENCIA AND BENITA
VALENCIA; ISAAC CORREA, SR. AND MALENA CORREA; DORA
DEVAN AND RICHARD DEVAN; GARY HAMANN AND RAENETTE
HAMANN; GABRIEL TORRES AND MARY TORRES; EARL BAILEY
AND HELEN BAILEY; ERNEST BARCELON, JR. AND APRIL
BARCELON; JAMES BARKER; NORMA BELCHER AND DEMPSEY
BELCHER; WILBURN BIRDWELL AND SUNCHIA BIRDWELL;
MARY BOYNTON; WILLIE BRYANT AND MARY BRYANT;
MARJORIE BYERS AND BERNARD BYERS; JUANITA DAVIS AND
TERRY DAVIS; THOMAS DINKEL AND BARBARA DINKEL;
TERRY DRAKE AND DIANNA DRAKE; PATRICIO ESPINOZA AND
CHARLOTTE ESPINOZA; TERRELL FACKERELL AND DONNA
FACKERELL; JOSEPH HOFFLER AND RUBY HOFFLER; ROBERT
HUBBARD AND CAROL HUBBARD; CAROL JASON AND HAROLD
B. JASON; JAMES KADRAMAS AND JOLYNN KADRAMAS;
ELNORA KELLEY; GLORIA LADWIG AND FRANK LADWIG;
EMILIANO LASTRELLA AND MARIVIC LASTRELLO; RONALD
NEWMAN AND ANNA JEAN NEWMAN; VICTOR POEN AND JEAN
POEN; GARY REYNOLDS AND KIMBERLY REYNOLDS; EZIQUIO
SANCHEZ AND PAMELA SANCHEZ; EVERETT SCHOOER AND
BERNIECE SCHOOER; LYNDA SENKO AND RODERICK SENKO;
LYLE SHANLEY AND HILDEGARD SHANLEY; DEBRA TERRY AND
MICHAEL TERRY; DAROL PAUGH AND JULIET B. PAUGH; A. HILL
AND KATHY HILL; CHARLES ANGERMAN AND JACKIE ANGERMAN;
MARK BANA AND KATHLEEN BANA; CHARLOTTE DERSTLER;
HERB McLAUGHLIN AND EDNA McLAUGHLIN; JENNIFER
MONTTOYA; GUNNAR SAARE; GEORGE GRUEFF AND PHYLISS
GRUEFF; ALVIN LORETT AND JENNIE LORETT; BERTIE ROBERT
AND EDMUND ROBERT; JAMES WINICK AND CORRINE L. WINICK;
DAN WOLLMAN AND CHRISTINE WOLLMAN; FLAVIO CHAVEZ AND
JENNIE CHAVEZ; WILLIAM HODGES AND GERI HODGES; JOSEPH
SINGLETON AND GLENDA SINGLETON; JOE NIEBERT AND RITA
NIEBERT; WILLIAM AVALOS AND CAROL AVALOS; CARLOS AVILA
AND KAREN L. AVILA; JENNIE BRODIE AND JAMES BRODIE; BETTY
CARLTON AND CARL CARLTON; CARMEN CHAVEZ AND JOSE CHAVEZ;
JULIE CORSENTINO; LORETTA DUNLOP AND CHARLES DUNLOP;
STEPHEN EARNEST AND MARIE EARNEST; HELEN ESQUIBEL AND
ALFONSO ESQUIBEL; ANTHONY GALYEAN AND CYNTHIA TRUJILLO;
ARCENIO GARCIA AND MARY LOU GARCIA; BEATRICE GARCIA
AND JOSE B. GARCIA; LUCY GARCIA AND JESUS GARCIA; EUGENE

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NOTICE OF
REMOVAL

NOV 25 2003
S.D.

GOLOB AND RUTH GOLOB; TONY GONZALES AND PAULINE GONZALES; CEDRIC GONZALEZ; LEE GUTIERREZ; BETTY HENKEL AND RICHARD HENKEL; ORLANDO HERRERA; HELEN KAPLAN AND JOSEPH KAPLAN; JACK LARKINS AND LUCY LARKINS; SADIE LOPEZ AND EVARISTO LOPEZ; MARY MAESTAS; JULIA MARTINEZ AND ELLER ATRRERA; PEARL MARTINEZ; RONALD MARTINEZ AND ANNETTE MARTINEZ; DANIEL MILLER AND DONNA MILLER; THOMAS MINSON AND RUTH MINSON; RAMONA MONTOYA AND ROBERT MONTOYA; SHARON NIELSON AND BILL NIELSON; GARFIELD QUINTANA AND VICTORIA QUINTANA; MANUEL QUINTANA AND GEORGIA QUINTANA; LORIE ROBERSON AND BOBBY ROBERSON; GARY ROSE; RAYMOND SALAZAR AND SARAH SALAZAR; SARAH SALAZAR AND RAYMOND SALAZAR; ANDREW SALDANA AND PRISCILLA SALDANA; VIVIAN SANCHEZ; HELEN SISNEROS AND VICTOR SISNEROS; AMBROSE SOLIS AND JOSEPHINE SOLIS; THOMAS STEPHENS; EUNICE STORM AND FRED STORM; HELEN TAFOYA AND JIM TAFOYA; PATRICK TENSLEY AND KATHERINE TENSLEY; JOE THOMPSON; JOSEPH TOTH AND JEANNE TOTH; JESSIE VALDEZ AND KATHERINE VALDEZ; JOSEPH VALDEZ AND MILLIE VALDEZ; JANICE WILES AND PAUL WILES; FELICITA WOLF AND VERNON WOLF; FRANK ZUPANCIC; ROBERT PECQUEUR AND THEAWANA PECQUEUR; ELIZABETH CARLO AND MARIANO CARLO; CAROLYN MASON AND GARY MASON;

Plaintiffs,

- against -

BAYER CORPORATION, BAYER A.G., GLAXOSMITHKLINE, PLC,
SMITHKLINE BEECHAM CORPORATION, D/B/A GLAXOSMITHKLINE,

Defendants.

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, FED. R. CIV. P. 81(c), and Local Civil Rule 81.1 of the United States District Courts for the Southern and Eastern Districts of New York, Defendant Bayer Corporation ("Bayer"), hereby removes the above-captioned action, which had been pending under Index No. 112500/03 in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.¹ In support of this

¹ GlaxoSmithKline plc ("GSK plc") was served on November 10, 2003. SmithKlineBeecham Corporation d/b/a GlaxoSmithKline ("GSK") has not been served in this action to date. Both entities consent to the removal of this

Notice, Bayer states as follows:

1. Complaint. Plaintiffs filed this First Amended Complaint ("Amended Complaint" or "Amd Compl.") on October 28, 2003.² Plaintiffs allege that they suffered personal injuries due to their ingestion of Baycol®, a drug marketed by Bayer. Plaintiffs assert claims for negligence, strict product liability, and breach of warranty.

2. Service and Consent. Defendant Bayer was served with a copy of the Amended Summons and Complaint on October 28, 2003. A copy of the Amended Summons and Complaint is annexed hereto as **Exhibit "B"**. Defendant GlaxoSmithKline plc was served on November 10, 2003 and subsequently executed a Consent to Remove form, a copy of which is annexed hereto as Exhibit "A".

3. Basis for Jurisdiction in this Court. The basis for jurisdiction in this Court is diversity of citizenship under 28 U.S.C. § 1332(a).

A. Diversity of Citizenship

Plaintiff

Upon information and belief, all named plaintiffs are individuals who reside in the State of Colorado and are therefore citizens of the State of Colorado. (See Ex. A at (Amd Compl.) ¶ 1).

action and both have executed a Consent to Remove form, a copy of which is annexed hereto as **Exhibit "A"**. Upon information and belief, Bayer A.G., has not yet been served. Even if Bayer A.G., had been served, because it is a foreign corporation organized under the laws of Germany, its inclusion in this lawsuit would not affect this Court's diversity jurisdiction. Moreover, Bayer A.G., which is represented by counsel for Bayer, consents to this removal without waiving its rights to proper service and reserving all other rights.

² This complaint was originally filed with the Supreme Court, County of New York on July 8, 2003, with multiple plaintiffs named. On October 28, 2003, an amended Summons and Complaint was filed naming different plaintiffs.

Defendants

Defendant Bayer is an Indiana corporation with its principal place of business in Pennsylvania, and thus, under 28 U.S.C. § 1332(c)(1), is a resident and citizen of both the states of Indiana and Pennsylvania.

Defendant Bayer A.G. is now, and was at the time of filing of this action, a foreign corporation organized and existing under the laws of Germany with its principal place of business in Germany. Amd Compl. ¶12b.

Defendant Smithkline Beecham Corporation d/b/a Glaxosmithkline is now, and was at the time filing of this action, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Pennsylvania. Amd Compl. ¶12d, e. Accordingly, under 28 U.S.C. § 1332(c)(1), it is a resident and citizen of the Commonwealth of Pennsylvania.

Defendant GlaxoSmithKline plc is now, and was at the time of the filing of this action, a British corporation with its principal place of business in England. Amd Compl. ¶12c.

B. Amount in Controversy

The amount in controversy exceeds \$75,000, exclusive of interest and costs. The Amended Complaint specifically seeks "compensatory damages in a sum that exceeds the jurisdictional limit of any Court that would otherwise have jurisdiction." (See Amended Complaint at Prayer for Relief).

Accordingly, the judgment sum sought by Plaintiff places an amount in controversy that clearly outstrips the \$75,000 jurisdictional threshold required to remove this action to this United States District Court.

4. Notice Given. Bayer Corp., has simultaneously filed a true and correct copy of

this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York. See 28 U.S.C. § 1446(d). A copy of the Notice to State Court of Filing of Notice of Removal in the State Court is attached hereto as **Exhibit "C"**. (To avoid duplication, Ex. C does not include the exhibits to the Notice to State Court of Filing of Notice of Removal in the State Court).

5. Removal is Timely. Bayer was served with the Amended Summons and Complaint on October 30, 2003. Accordingly, this Notice of Removal is timely filed within the thirty days allotted for removal by 28 U.S.C. § 1446(b). See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 119 S. Ct. 1322, 143 L. Ed. 2d 448 (1999) (holding that thirty day time period under removal statute begins to run from the date of formal service).

6. Pleadings and Process. Under 28 U.S.C. § 1446(a), the removing defendants are required to attach to this notice a copy of all process, pleadings, and orders served upon them. Accordingly, as noted previously, a copy of the Amended Summons and Complaint is attached hereto as Exhibit A.

7. Baycol MDL. On December 18, 2001, the Judicial Panel on Multi-District Litigation ("JPML") issued an order establishing an MDL for all Baycol lawsuits pending in the federal courts. See In re Baycol Prods. Liab. Litig., 180 F. Supp. 2d 1378 (J.P.M.L. 2001). The JPML has been transferring all such cases to the United States District Court for the District of Minnesota. Defendant Bayer intends to notify the JPML that this action is a "tag-along" case that should be transferred to the MDL proceedings in the District of Minnesota.

WHEREFORE, Bayer hereby remove this case from the Supreme Court of the State of New York, County of New York, to this United States District Court.

Dated: New York, New York
November 25, 2003

BAYER CORPORATION

DOS/Net

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